

REMARKS

Reconsideration of the present application in view of the above claim amendments and the following remarks is respectfully requested.

Status of the Claims

Claims 11 and 13-29 are pending. Claims 11, 14-15, 21-22, 25-26 and 29 are amended herein. Claims 11, 14, 22 and 29 are amended to correct proof-reading errors. Dependent claims 15 and 25 have been amended to incorporate all of the limitations of the claims from which they depend, and thereby become independent claims. Likewise, dependent claim 26 is amended to include all of the limitations of claim 14. Claim 21 is amended to the preferred concentration range of the extract in the composition. Support for these amendments is found throughout the specification as originally filed. Claims 23 and 24 are cancelled without prejudice to pursuing claims of the same or similar scope in a continuation or divisional application. No new claims have been added.

No new matter has been introduced.

Summary of the Invention as Claimed

The pending claims as presently amended are directed to cosmetic or dermatopharmaceutical compositions for use in connection with topical application, or to methods of cosmetic treatment of the human body comprising applying to the surface of the human body a composition as now claimed, or to methods of preparing a cosmetic composition. The composition claims (claims 11, 13 – 14, and 21 – 23) are specifically directed to compositions adapted for use in connection with topical application and require, in addition to the extract of leaves of a *Castanea sativa* plant, at least one cosmetic and/or dermatopharmaceutical auxiliary and/or additives adapted for topical treatment of the human body.

Rejections under 35 U.S.C. § 103(a)

Previously pending claims 11 and 13-29 were rejected under 35 U.S.C. § 103(a) as being obvious over Peyrot et al. (FR 2850273, English translation; "Peyrot"). Applicants respectfully traverse the rejection.

Applicants submit that Peyrot is not prior art under 35 U.S.C. § 102. Applicants respectfully point out that the present application is a national stage application filed under 35 U.S.C. § 371, claiming priority from application PCT/EP2005/001105, filed February 4, 2005, which claims priority from European application EP 04290388.0, filed February 13, 2004. Both priority documents are in English, therefore no translation is necessary in order to obtain the priority date of February 13, 2004 (see previous office action, dated 05/21/2008, page 6). Thus, Peyrot, published July 30, 2004, has a later publication date than applicants' priority date as perfected. Therefore, Peyrot should be disqualified as prior art to the present application, thereby obviating the rejection.

Previously pending claims 11, 13-14, 20-23 and 27-29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Withcl (Herbal Drugs and Phytopharmaceuticals: a Handbook for Practice on a Scientific Basis, CRC Press, 1994, pp. 132-133). Applicants respectfully traverse the rejection.

Withcl discloses **medicinal** uses of Castaneae folium, Chestnut leaf. A tea is made by either steeping finely cut leaves in boiling water, or boiling the cut leaves in water for a short time, followed by straining. Use of the aqueous extract in medications, such as antitussives and expectorants, is disclosed.

The Examiner stated that "Withcl also beneficially discloses that such Castanea sativa leaf extract preparations have been incorporated into various prior art pharmaceutical compositions which would also intrinsically comprise

auxiliaries and/or additives therein" (Office Action, page 4, bottom paragraph). However it is clear that the auxiliaries/additives added to a phytomedicine designed to be taken internally to the human body, would not be the same auxiliaries/additives added to a cosmetic or dermopharmaceutical designed to be administered topically to body surface, that is, to the skin, hair, or nails. Thus, applicants' Markush group of cosmetic/dermopharmaceutical auxiliaries, including such ingredients as pearlescent waxes, oily bodies, superfatting agents, deodorants, antiperspirants, antidandruff agents, insect repellents, perfume oils and the like, would be contraindicated for a phytomedicine to be administered internally, and might well render the composition toxic to the patient. Accordingly, applicants respectfully submit that the claims as now pending are unobvious and patentable over this publication.

It is noted that since Peyrot is disqualified as prior art, claims 15-19 and 25-26 are not presently rejected and should be allowed. Therefore the Examiner is respectfully requested to withdraw the finality of the present office action and to pass claims 15-19 and 25-26, as presently amended, to allowance.

Conclusion

In summary, in view of the above claim amendments and remarks, applicants respectfully submit that the invention as now claimed defines subject matter which is patentable over the cited documents. The Examiner is respectfully requested to reconsider, withdraw the finality of the Office Action, withdraw the rejections, and allow the claims.

If any additional fees are required in support of this application, authorization is granted to charge our Deposit Account No. 50-1943.

US Application no. 10/597,964

Reply to Office Action dated May 7, 2009

Respectfully submitted,

Dated: August 7, 2009

/Robert N. Henrie II/
Robert N. Henrie II
Reg. No. 60,851
Fox Rothschild LLP
2000 Market Street; Tenth Floor
Philadelphia, PA 19103
Telephone (215) 299-2000
Facsimile (215) 299-2150